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July 18, 2011

VIA ELECTRONIC SUBMISSION (<http://fjallfoss.fcc.gov/ecfs2/>)

Federal Communications Commission

ATTN: Commission's Secretary, Office of the Secretary

445 12th Street SW

Washington, DC 20554

**Re: WC Docket No. 11-59, Acceleration of Broadband Deployment:
Expanding the Reach and Reducing the Cost of Broadband
Deployment by Improving Policies Regarding Public Rights-of-
Way and Wireless Facilities Siting**

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Dear Commissioners:

This Office represents the Oregon cities of La Pine, Madras, Burns, John Day, and Prairie City (individually a "City" and collectively the "Cities"). On behalf of the Cities, I submit this letter in response to the Notice of Inquiry ("NOI") released April 7, 2011 in the above-referenced proceeding. Through these comments, the Cities seek to provide the Commission with basic information regarding each of their local rights-of-way and facility management practices and charges.

Each City has spent significant time and resources researching and negotiating franchise agreements with their respective broadband service providers and other rights-of-way users. These efforts have resulted in mutually favorable long-term arrangements that protect each City's unique needs and interests while promoting efficient and effective broadband deployment. The Commission should not interfere with this process. By adopting rules in this area, the Commission will disrupt established relationships between local communities and broadband service providers. This disruption will result in substantial cost to both the local communities and the broadband providers.

CITIES

The following represents a general description of each City:

City of La Pine

The City of La Pine is Oregon's newest city, incorporated in 2006. La Pine is located in Central Oregon along U.S. 97. Although La Pine's current population is approximately 1,700, several thousand people living just outside the city limits call La Pine home. La Pine's population is comprised of nearly 50% retirees. La Pine's

working residents are employed primarily in the forestry and tourism industries and in the public sector. La Pine is located within the Bend-La Pine School District.

City of Madras

The City of Madras was incorporated in 1910. Madras is located at the intersection of U.S. 26 and 97, approximately 120 miles southeast of Portland and 45 miles north of Bend. Madras' population of approximately 6,640 is culturally diverse, comprised of several ethnic groups including Hispanics and Native Americans. The economy of Madras and Jefferson County is supported by a mix of agricultural and manufacturing enterprises.

Madras has seen steady development activity over the past decade. This is due in large part to its proximity to Portland and ease of accessibility by road, rail, and plane. The Madras Airport has the third largest runway in Oregon.

City of Burns

The City of Burns is located approximately 126 miles east of Bend and 125 miles southwest of the I-84 corridor. State highways 395, 20, 78, and 205 service the community. The railroad servicing Burns was removed several years ago. Air travel is serviced through the Burns Municipal Airport.

Total non-farm employment for Burns as of May, 2011 was 2,150, 100 less than the previous year. Federal, state, and local government accounted for 1,070 of non-farm jobs. In the private sector, Burns' residents are employed primarily in the transportation, utilities, retail, trade, and hospitality industries. The seasonally adjusted unemployment rate as of May, 2011 was 13.9%, largely due to dismal economic growth in other areas of Harney County. Median household income for Burns is \$17,000.00 less than the state average.

Harney County School District No. 3 is comprised of four schools with a total student population of 895. Slater Elementary has 397 students, Hines Middle School has 191 students, and Burns High School has 274 students. Burns Alternative School has 33 students.

City of John Day

The City of John Day is located approximately one mile north of Canyon City in Grant County, Oregon, at the intersection of U.S. 26 and 395. John Day was named after the nearby John Day River, which had been named after a Virginian member of the 1811 Astor Expedition, John Day. John Day was incorporated in 1901.

As of the 2010 census, John Day had a total population of 1,744, making it the largest city in Grant County. The official population estimate in 2011 is 1,756.

Historically, ranching, timber harvesting, and milling have been the economic mainstays of the community. However, environmental concerns have resulted in a significant decrease in each of these industries. Recreation, retirement, and government (e.g., the headquarters of the Malheur National Forest is in John Day) now make up the primary economy.

City of Prairie City

The City of Prairie City is located in Grant County along U.S. 26 in Eastern Oregon. Prairie City sits on the north side of a wide prairie that inclines to the base of the Strawberry Mountain Range. This small community enjoys unsurpassed natural beauty, a small yet strong business district, a reputable school district offering grades K-12, and an arts community. The current population is 1,100. The economy is supported primarily by ranching, a lumber mill, a wood-fired co-gen electric power plant, and a number of retail vendors and public services.

To date, each City has successfully managed its rights-of-way to enable deployment of at least one broadband network. As a result, broadband services are available to nearly all households and businesses within each City. There is no evidence that City policies or charges with respect to the placement of facilities in the rights-of-way have discouraged broadband deployment. Each City welcomes broadband deployment and is willing to work with any company willing to provide broadband services.

RESPONSE

In response to the NOI, the Cities provide the following information:

A. Application Procedures, Forms, Substantive Requirements, and Charges

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available. Each City's current franchise agreements (broadband and otherwise) are published on the City's website and/or are available upon request. The franchise agreements clearly (a) implement the substantive policies of each City with respect to the management of its rights-of-way (e.g., public safety, economic development, environmental, and other community interests), and (b) set forth the fees for use of the City's rights-of-way. Most of the Cities do not have a formal application process. Rather, each city manager and this office work closely with broadband service providers to develop and implement a workable arrangement.

B. Source of Delays

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications. Without exception, each City understands the value and necessity of broadband services, particularly the positive and growing impact broadband service has on its local economy. Therefore, most franchise agreements are negotiated and processed very quickly. The source of delay is rarely due to disagreements concerning the provider's use of a City's rights-of-way.

With that being said, in our experience, delays have been caused by disagreement concerning the interpretation of Oregon and/or federal laws concerning franchise fees and related charges. For example, in Oregon, incumbent local exchange carriers are treated differently than other competing local exchange carriers as it relates to (a) the manner and method by which local governments charge carriers for their use of the rights-of-way, and (b) the amounts chargeable. There is further discrepancy between the City's ability to charge for telephone exchange services

and broadband services. In our experience, some broadband service providers commence negotiations from the position that, as broadband service providers, they may use a City's rights-of-way free of charge. While this position is not supported by Oregon and/or federal laws, it has on several occasions delayed the negotiation process. This issue is resolving itself as regional and national broadband service providers become more familiar with applicable Oregon and federal laws.

C. Improvements

The Commission asks whether there are particular practices that can improve processing. Each City has recognized several practices that streamline and improve the process. As mentioned above, each City's current franchise agreements are available on the City's website or upon request. This informs broadband providers of the City's policies and charges concerning use of the City's rights-of-way. In addition, in order to save City resources and streamline the negotiation and implementation process, city managers frequently communicate with each other regarding which practices and policies have proved most effective and which have proven to be unnecessary and/or more difficult than expected. One City, when undertaking street improvement projects, includes providers early in the project in order to share trenches for utilities. This saves both the City and the provider time and resources.

In one City's experience, a major delay in the franchising process has been caused by a lack of communication on the part of providers. In one case, the City sent a draft of an amended franchise agreement to a provider and waited over one year to receive a reply to the proposed amended franchise agreement. Providers are frequently nonresponsive to telephone calls and emails. The Cities are at the mercy of the providers to submit accurate data and other information necessary to determine the franchise fees. Regarding providers' use of public rights-of-way, in one City's experience, it is not uncommon for providers to overstep their easement rights by carrying-on activities within rights-of-way without first notifying city staff.

Finally, underground cable, especially fiber, interferes with at least one City's ability to properly maintain water and sewer lines. Fiber is very unforgiving and fragile; the slightest tap can damage the glass tubing of the fiber optics. As a result, in one City's experience, routine water/sewer system repairs and service connections are more costly and time consuming to the City. When installing new water/sewer connections on property containing fiber optic cable, the City adds at least two hours of labor to its standard estimate. One provider requires a person on site whenever the City is digging near its fiber optic cable as it is very expensive to repair the fiber once it's broken.

D. Permitting Charges

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees." Specifically, the Commission asks commentators to identify the following: (a) the type of facilities for which charges are assessed; (b) how such charges are structured (e.g., per foot or percent of revenue in the case of rights-of-way fees); (c) whether the community is subject to comprehensive state franchising or rights-of-way laws; (d) whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct

and/or indirect), and accompanied by comprehensive terms, and conditions; and (e) the value of any in-kind contributions required for access or permit approval. The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.

In Oregon, municipalities are subject to comprehensive state franchising laws concerning franchise agreements with utility and telecommunications service providers. Franchise fees imposed under the Cities' franchise agreements with these providers often are based upon a percentage of revenues generated by the utility or telecommunications provider within the City. However, recently, non-incumbent local exchange carriers have expressed a desire to provide only broadband services. Where the provider will not be providing any telecommunications services, Cities have considered charging these providers based upon the footage of optical fiber cable owned and operated by the provider within the particular City's limits. The Cities have attempted to establish reasonable and nondiscriminatory per foot fees that would cover the direct and indirect costs associated with the provider's installation of cables and other facilities within the rights-of-way.

E. Local Policy Objectives

The Commission asks what "policy goals and other objectives" underlie the local practices and charges in this area. The policy goals and objectives for each City are substantially similar. As mentioned above, each City recognizes the importance of offering reliable broadband services to its residents and the positive and growing impact broadband services have on its local economy. Through this lens, each City desires to (a) facilitate the responsible deployment of services, (b) make the services broadly available, (c) ensure public safety, (d) avoid traffic disruption, (e) maintain and repair roadways, (f) prevent public disruption and damage to abutting property, (g) minimize accelerated deterioration to roads that accompanies street cuts, (h) satisfy aesthetic, environmental, or historic preservation concerns, (i) avoid damage to the property of others, and (j) obtain fair compensation for the use of public property.

F. Possible Commission Actions

Finally, the Commission asks what actions the Commission might take in this area. Each City strongly urges the FCC to refrain from regulating the management of local rights-of-way or the facility placement process. These are highly fact-specific matters, which turn on local engineering practices, environmental and historical conditions, traffic and economic development patterns, and other significant community-specific concerns and circumstances. These matters are effectively managed by each City's experienced and competent staff. Imposing a federal regulatory regime will undermine important local policies and will create unnecessary costs and uncertainty for the local communities. Likewise, Commission regulation of charges or fees for use of the rights-of-way would have significant impacts on each City, and may actually make it infeasible to continue to maintain or provide necessary public services. If the Commission feels it is necessary to act in this area at all, it should limit itself to voluntary programs and educational activities and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

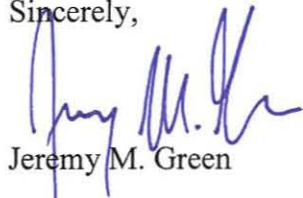
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CONCLUSION

The Cities urge the Commission to conclude that local government management of rights-of-way, facilities, and charges is not impeding broadband deployment. As indicated above, in each City the policies and procedures are designed to protect important local interests while promoting broadband deployment. There is no evidence that the Cities' policies and processes (nor that of any other local government) have impaired any provider from providing broadband services within a City. Any federal regulation in this area will prove costly, disruptive, and will undermine important local policies.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeremy M. Green", is written over the printed name.

Jeremy M. Green

Cc: Clients